

TAB 5

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

ALEX NGUYEN
1050 Kiely Blvd. #2608
Santa Clara, CA 95055
408-499-4239
communicator@doubleperfect.com

Complainant,

v.

CELLCO PARTNERSHIP &
AFFILIATED ENTITIES d/b/a
VERIZON WIRELESS

Defendant.

File No. _____

FIRST SET OF INTERROGATORIES FROM ALEX NGUYEN TO VERIZON

Pursuant to Section 1.729 of the Commission's rules, I, Alex Nguyen, respectfully request that Cellco Partnership & Affiliated Entities d/b/a Verizon Wireless ("VZW") respond to the following interrogatories in accordance with the definitions and instructions set forth below:

I. DEFINITIONS

1. "Apple" means Apple Inc.; any of its parent, affiliated, or subsidiary companies; and agents, attorneys, directors, employees, officers, representatives, and other persons and entities acting on their behalf.

2. "Asus" means ASUSTeK Computer Inc.; any of its parent, affiliated, or subsidiary companies; and agents, attorneys, directors, employees, officers, representatives, and other persons and entities acting on their behalf.

3. "Communication" means any information in electronic, oral, written, or other

form (however produced, reproduced, stored, or transferred), including but not limited to documents, audio/visual recordings, conversations, meetings, and telephone calls.

4. “Document” means any graphic, written, or similar matter (however produced, reproduced, stored, or transferred), including but not limited to calendars, contracts, electronic mail, letters, memoranda, minutes, notes, reports, schedules, specifications, summaries, tests, test results, and transcripts.

5. “Google” means Google Inc.; any of its parent, affiliated, or subsidiary companies (including but not limited to Alphabet Inc.); and agents, attorneys, directors, employees, officers, representatives, and other persons and entities acting on their behalf.

6. “HTC” means HTC Corporation; any of its parent, affiliated, or subsidiary companies; and agents, attorneys, directors, employees, officers, representatives, and other persons and entities acting on their behalf.

7. “Identify,” when used in relation to a communication, means identify all persons involved (including but not limited to addressees, authors, custodians, editors, participants, and speakers) and specify the subject matter and date of the communication.

8. “Identify,” when used in relation to a person, means specify the full name, employer, job title, job duties, and contact information (including but not limited to mailing address, telephone number, and e-mail address) of the person.

9. “LG” means LG Electronics; any of its parent, affiliated, or subsidiary companies (including but not limited to LG Corporation); and agents, attorneys, directors, employees, officers, representatives, and other persons and entities acting on their behalf.

10. “Person” means any natural person or entity (including but not limited to

associations, businesses, corporations, joint ventures, partnerships, and groups of persons).

11. “Samsung” means Samsung Electronics; any of its parent, affiliated, or subsidiary companies; and agents, attorneys, directors, employees, officers, representatives, and other persons and entities acting on their behalf.

12. “Verizon” means Cellco Partnership & Affiliated Entities d/b/a Verizon Wireless; any of its parent, affiliated, or subsidiary companies (including but not limited to Verizon Communications Inc. and AOL); and agents, attorneys, directors, employees, officers, representatives, and other persons and entities acting on their behalf.

II. INSTRUCTIONS

1. All interrogatories are continuing in nature and require that Verizon amend or supplement its responses if it obtains new, different, or more complete information.

2. If Verizon elects to withhold production of any communication (or any part of any communication), identify the communication (or each part Verizon wants to withhold) in accordance with the definitions above and specify the privilege Verizon claims.

3. If Verizon has discarded or destroyed any communication, identify the communication in accordance with the definitions above, specify when and why Verizon discarded or destroyed it, and identify all persons involved in discarding or destroying it. If Verizon has an applicable discarding or destruction policy, identify and produce this policy and quote the specific text justifying Verizon's discarding or destruction.

4. Respond to each interrogatory fully and *with specificity*. In particular, specify time ranges in audio/visual recordings, cite page numbers in documents, quote specific text, *etc.*

5. Restate the corresponding interrogatory before each response.

III. INTERROGATORIES

Alex-VZW 1: Describe in detail the “systems issue” with the Nexus 7 that Verizon alleged it uncovered on November 6, 2013?¹ Identify all test results and communications (including but not limited to communications with Asus and Google and communications within Verizon) related to the Nexus 7 and the “systems issue” that Verizon alleged existed.

Explanation: Verizon claims its “certification” process only tests network connectivity² and “generally takes between four and six weeks.”³ The information sought in this interrogatory is necessary to the resolution of the assertion that Verizon reserved an alleged “systems issue” for a plausible-sounding alibi to block the Nexus 7 for 22 weeks and suppress competition against Verizon's Ellipsis 7 tablet (released November 7, 2013).⁴ Verizon has neither specified the

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- 1 David Ruddock. *Verizon: Google, Asus Have Opted To Wait Until Nexus 7 Gets KitKat To Certify For Use On Network, “Systems Issue” With 4.3 To Blame.* <http://www.androidpolice.com/2013/11/06/verizon-google-asus-have-opted-to-wait-until-nexus-7-gets-kitkat-to-certify-for-use-on-network-systems-issue-with-4-3-to-blame/> [“As such, you'll probably still be waiting several weeks, if not substantially longer, before you can activate your Nexus 7 on Verizon's LTE network. We've asked Verizon for clarification on what the systems issue referred to was and when we can expect the update / certification to happen, though I wouldn't hold my breath on a detailed reply to either inquiry.”]
 - 2 Rob Pegoraro. *Verizon Wireless To Open Itself Up.* http://voices.washingtonpost.com/fasterforward/2007/11/verizon_wireless_to_open_itself.htm [“We do not expect this will be a difficult or lengthy process, since we will only be testing network connectivity.”]
 - 3 Debi Lewis. *Statement on Verizon Wireless Device Certification.* <https://www.verizonwireless.com/news/article/2013/09/verizon-wireless-device-certification-statement.html>
 - 4 Ricardo Bilton. *How convenient: Verizon announces its own 7-inch tablet, even as it locks the Nexus 7 in certification limbo.* <http://venturebeat.com/2013/11/06/how-convenient-verizon-announces-its-own-7-inch-tablet-even-as-it-locks-the-nexus-7-in-certification-limbo/> [“Verizon eventually backtracked on that line, noting that it had to ensure the Nexus 7 worked on its LTE network — despite the fact the FCC had already done so. The process, which the company said takes up to six weeks, started in mid-August. That was at least 10 weeks ago.... The reality is that the Nexus 7 may never get certified for Verizon's network — which makes it convenient that Verizon is filling its 7-inch tablet void this fall with one of its own.... While it's hard to prove that Verizon has kept the Nexus 7 in certification limbo just so it can sell its own tablet uncontested, that's exactly what it looks like from the outside.”]

“systems issue” it alleged existed nor provided any evidence that this alleged “systems issue” harmed its network, and this information isn't available to me from any source other than Verizon.

Verizon has refused to provide evidence that devices or applications meet/don't meet its “requirements,” claiming that such information is “proprietary”;⁵ however, as required by the Commission,⁶ Verizon must specify “the basis for denying access”⁷ and has “the burden of proof to demonstrate that it has adopted reasonable network standards and reasonably applied those standards.”⁸

Alex-VZW 2: When did Verizon begin to work with Apple to obtain the IMEI ranges of iPhone 6 and iPhone 6 Plus devices sold by sources other than Verizon?⁹ Explain why Verizon took until August 13, 2015 to allow customers to order SIM cards for third-party devices even though they sought approval to do so at least as early as September 22, 2014¹⁰ and identify all

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- 5 James M. Turner. *Verizon Prevents Treo Use As 3G Modem*. <http://www.informationweek.com/verizon-prevents-treo-use-as-3g-modem/d/d-id/1039511> (January 12, 2006) [“According to Verizon, the Treo doesn't currently meet requirements they specify for their network.... He said that the currently-sold V CAST phones do not properly interact with their network when used as a modem, but refused to cite examples, claiming that such information is proprietary.”]
- 6 22 FCC Rcd. 15372 ¶ 224 (2007) [“We expect that any standards adopted by a C Block licensee will be non-proprietary, such that they would be open to any third party vendors and that the standards applied to third parties will be no more restrictive than those applied to the provider's preferred vendors. We believe that standards transparency should greatly reduce the potential for manipulative “white-listing,” i.e., providers creating complex and vague qualification and approval processes for third parties before approval to attach devices or run applications on the network.”]
- 7 47 CFR § 27.16(d)(2)
- 8 47 CFR § 27.16(f)
- 9 Letter from Verizon Assistant General Counsel David Haga to Alex Nguyen (January 18, 2016) [“Verizon worked with Apple to obtain the necessary IMEI ranges and, once Apple provided them, a customer could then use a third party iPhone 6 and 6 Plus on the Verizon network.”]
- 10 rigormortis. *not only is the iPhone 6 unlocked, but the t-mobile phones work on verizon!* <https://discussions.apple.com/thread/6552532> (September 22, 2014)

communications (including but not limited to communications with Apple and communications within Verizon) related to iPhone 6 and iPhone 6 Plus devices sold by sources other than Verizon.

Explanation: As required by the Commission, Verizon must “expeditiously” review requests to employ third-party devices and applications and offer opportunities to amend requests to accommodate its concerns.¹¹ However, even though Verizon claims its “certification” process generally takes between four and six weeks, the carrier blocked third-party iPhone 6 and iPhone 6 Plus devices (that are the same models sold by Verizon) for 47 weeks. At least as early as September 22, 2014 (three days after Apple released the devices), customers sought approval to order SIM cards for devices sold by competing sources, but until August 13, 2015, Verizon refused such requests and compelled customers to purchase devices from Verizon and affiliated retailers (at higher prices).¹²

Verizon said it “worked with Apple” but didn't specify when it began to do so. The information sought in this interrogatory is necessary to the resolution of the assertion that Verizon intentionally blocks/delays customers from ordering SIM cards for third-party devices to

11 22 FCC Rcd. 15372 ¶ 224 (2007) [“We believe that standards transparency should greatly reduce the potential for manipulative “white-listing,” *i.e.*, providers creating complex and vague qualification and approval processes for third parties before approval to attach devices or run applications on the network. In addition to publishing any applicable standards, providers must establish a reasonable process for expeditiously reviewing requests from manufacturers, application developers and consumers to employ devices and applications on their networks. If a provider denies such a request, it must offer a specific explanation and an opportunity for amendment of the request to accommodate the provider's concerns. Finally, the Commission will ensure the sufficient openness of any network management practices and selected technical standards in the event the approach outlined above proves unsatisfactory.”]

12 melgax. *Impossible to get new sim card with Verizon*. https://www.reddit.com/r/verizon/comments/2kohk7/impossible_to_get_new_sim_card_with_verizon/?sort=top (October 29, 2014) [“I have been talking with a bunch of support people for hours in the last two days, and apparently they don't have a way to do this. And the only solution I was offered was to trade in my brand-new-phone for \$350 and get a new one from Verizon. I really hope that was a joke.”]

protect sales at its own retail operations. This information isn't available to me from any source other than Verizon.

Alex-VZW 3: Identify all “Verizon Wireless software” installed on Nexus 6 smartphones sold by Verizon that wasn't installed on the same hardware sold by competing sources¹³ before Verizon started selling the Nexus 6 on March 12, 2015 and indicate which software, if any, are necessary for connectivity with the Verizon Wireless network.

Explanation: Verizon claims its “certification” process only tests network connectivity and “generally takes between four and six weeks.” The information sought in this interrogatory is necessary to the resolution of the assertion that Verizon alleged the necessity of unspecified “Verizon Wireless software” for a plausible-sounding alibi to block third-party Nexus 6 smartphones (released October 29, 2014) for 29 weeks, suppress competition against Verizon's Droid Turbo smartphone (released October 30, 2014), and protect sales of Nexus 6 smartphones from its own retail operations.¹⁴

Verizon admitted the hardware is “the same for all domestic Nexus 6 devices,” and customers used third-party devices (which had already been certified by the Commission's Office of Engineering and Technology as non-harmful) with existing SIM cards at least as early as October 31, 2014 (over 29 weeks before Verizon elected to “certify” them),¹⁵ but Verizon hasn't

13 Martha Haecherl. Response to informal complaint.

<http://www.aegisdoctrine.org/otherstuff/FCCN6Letter1.jpg> (April 30, 2015) [“To date, the only version of the Nexus 6 that has been certified for operation of the Verizon Wireless network is the version with Verizon Wireless installed software. While Google has confirmed for Verizon Wireless that the Nexus 6 hardware is the same for all domestic Nexus 6 devices, the software installed by Google in the device varies between carriers.”]

14 Shawn De Cesari. *[Shocker] Even After Launching The Nexus 6, Verizon Still Won't Officially Activate One That Wasn't Purchased From The Carrier.*

<http://www.androidpolice.com/2015/03/28/shocker-even-after-launching-the-nexus-6-verizon-still-wont-officially-activate-one-that-wasnt-purchased-from-the-carrier/>

15 Kellex. *Nexus 6 Working on Verizon Out of the Box.* <http://www.droid->

provided any evidence that such usage harmed its network, and this information isn't available to me from any source other than Verizon.

Alex-VZW 4: When did Verizon begin to work with Google to deliver “Verizon Wireless software” to Nexus 6 devices sold by sources other than Verizon? Identify all test results and communications (including but not limited to communications with Google and communications within Verizon) that demonstrate Verizon “worked with Google” to deliver this software¹⁶ and explain why third-party device owners couldn't get this software (A) when Google started selling the Nexus 6 on October 29, 2014 or (B) when Verizon started selling the Nexus 6 on March 12, 2015, even though customers sought approval to use devices sold by competing sources at least as early as November 18, 2014¹⁷ and Google was able to deliver such software to third-party Asus Nexus 7 tablets just as Verizon started to sell the tablet and accessories on February 13, 2014.¹⁸

Explanation: In response to a complaint the Commission forwarded to Verizon on April 9, 2015, the carrier admitted the hardware is “the same for all domestic Nexus 6 devices” but justified blocking third-party Nexus 6 smartphones (that are the same models sold by Verizon) by

life.com/2014/10/31/nexus-6-working-on-verizon-out-of-the-box/

16 Letter from Tanisha D. (Verizon Wireless Executive Relations) to Alex Nguyen (June 11, 2015) [“We are pleased to announce that Verizon Wireless heard you and worked with Google so that the Verizon Wireless software may be delivered to such devices.”]

17 biggtdp. *How to get a Verizon nano sim for the Nexus 6*. <http://forum.xda-developers.com/showpost.php?p=56852384&postcount=7> (November 18, 2014) [“Tried it last night and was told no by two reps and their manager. All three told me go back to Motorola because the phone is not provisioned for Verizon.”]

18 Jerry Hildenbrand. *Nexus 7 LTE getting Verizon compatibility update*. <https://www.androidcentral.com/nexus-7-lte-getting-verizon-compatibility-update> (February 12, 2014) [Your LTE-equipped Nexus 7 should be seeing an update today that adds “Full compatibility with Verizon's 4G LTE network” — though plenty of people are using it with no issues and no update.]

alleging the existence of vague software variations.¹⁹ However, Verizon neither specified the software variations it alleged existed nor provided any evidence that these alleged software variations harmed its network. Additionally, the carrier alleged Google didn't have a way to deliver “Verizon Wireless software” to devices not sold by the carrier,²⁰ but in an interview on October 22, 2014 (over 23 weeks earlier), Dave Burke, VP of engineering for the Android platform and Nexus devices at Google, said otherwise.²¹ Even earlier, Google clearly had a way to deliver “Verizon Wireless software” to third-party devices: coincidentally, Google was able to deliver such software to third-party Asus Nexus 7 tablets just as Verizon started to sell the tablet (and accessories) on February 13, 2014.

Verizon claims its “certification” process generally takes between four and six weeks. The information sought in this interrogatory is necessary to the resolution of the assertion that Verizon reserved unspecified “Verizon Wireless software” for a plausible-sounding alibi to block third-party Nexus 6 smartphones (released October 29, 2014) for 29 weeks, suppress competition against Verizon's Droid Turbo smartphone (released October 30, 2014), and protect sales of Nexus 6 smartphones from its own retail operations. This information isn't available to me from any source other than Verizon.

Alex-VZW 5: Do Apple SIMs violate any of Verizon's technical requirements? Explain

19 Andrea Mattia. Response to informal complaint. <http://forum.xda-developers.com/showpost.php?p=60499191&postcount=224> (May 3, 2015)

20 *Id.* [“Further, Google does not currently have a way to deliver Verizon Wireless software to a Nexus 6 device on which a different carrier's software was originally installed by Google. Accordingly, [his] Nexus 6 device is not approved for use on the Verizon Wireless network.”]

21 Ron Amadeo. *Hands-on with the Nexus 6 and Nexus 9, Google's shot at “premium” flagships.* <http://arstechnica.com/gadgets/2014/10/hands-on-with-the-nexus-6-and-nexus-9-googles-shot-at-premium-flagships/> [“What happens now is when you've got a Verizon SIM in the device, it actually installs Verizon apps as part of the setup flow, and then you can remove them if you want as part of the Play Infrastructure. And Verizon can update it.”]

why the Apple SIMs embedded in the iPads Verizon provides to customers are disabled,²² quote the specific text in Verizon's requirements that justifies the disabling of Embedded Apple SIMs if Verizon has any justifications for doing so (or requesting Apple to do so), and identify all requirements documents, test results, and communications (including but not limited to communications with Apple and communications within Verizon) related to Embedded Apple SIMs.

Explanation: The information sought in this interrogatory is necessary to the resolution of the assertion that Verizon violated 47 USC § 201(b) and 47 CFR §§ 8.5, 8.11, and 27.16 of the Commission's rules by abusing its position as gatekeeper (in particular, its retail operations) to disable (or compel Apple to disable) Embedded Apple SIMs (which allow customers to use devices on other providers' networks without physically acquiring and switching SIM cards) built into devices it provides to customers.²³ This information isn't available to me from any source other than Verizon.

Verizon has refused to provide evidence that devices or applications meet/don't meet its “requirements,” claiming that such information is “proprietary”; however, as required by the

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- 22 Ina Fried. *Latest iPad Pro Makes It Even Easier to Switch Wireless Carriers*. <https://recode.net/2016/03/22/latest-ipad-pro-makes-it-even-easier-to-switch-wireless-carriers/> [“Once again, though, while Apple is trying to give users easy built-in options, not all service providers are keen on the notion. T-Mobile and Sprint are fully supporting the built-in Apple SIM feature. AT&T, however, will tie the Apple SIM to its network if you buy your iPad at one of its retail stores. Verizon, meanwhile, will require a separate SIM card and disable the built-in embedded Apple SIM on the iPads it sells.... The ability to choose among multiple carriers from a single device is not unique to Apple, but it is definitely not the norm in the U.S., where carriers continue to play a big role and many devices are sold within the providers' retail stores.”]
- 23 47 CFR § 27.16(e) [“No licensee may disable features on handsets it provides to customers, to the extent such features are compliant with the licensee's standards pursuant to paragraph (b) of this section, nor configure handsets it provides to prohibit use of such handsets on other providers' networks.”]

Commission, Verizon must specify “the basis for denying access” and has “the burden of proof to demonstrate that it has adopted reasonable network standards and reasonably applied those standards.”

Alex-VZW 6: What was Verizon testing when it said it was “evaluating” Samsung Pay on August 21, 2015²⁴ and March 9, 2016?²⁵ Identify all test results and communications (including but not limited to communications with Samsung and communications within Verizon) related to the testing Verizon said it was doing on August 21, 2015 and March 9, 2016.

Explanation: Samsung told technology journalist Walt Mossberg that Verizon blocked Samsung from preloading Samsung Internet and Samsung Pay on its devices,²⁶ a Samsung Pay executive said Verizon blocked Samsung Pay over “economics,”²⁷ and Verizon admitted that if Samsung were to preload Samsung Pay on its devices, Verizon would refuse to sell such devices.²⁸

The information sought in this interrogatory is necessary to the resolution of the assertion

24 Tracy G. Response to complaint.

https://www.reddit.com/r/Android/comments/3hnmtv/i_sent_an_email_to_various_verizon_executives/ (August 19, 2015) [“Verizon Wireless is actively reviewing and testing the Samsung Pay option. While we do not have a release date I can currently give you, ... evaluation of the service has not been completed as of yet. The extensive testing we do ensures our customers continue to enjoy the best network and services available in the market.”]

25 Jeffrey Nelson (VP, Communications at Verizon). Tweet on March 9, 2016.

<https://twitter.com/JNels/status/707679902175248384>

26 Walt Mossberg. *Mossberg: Samsung’s New Galaxy S7 Phones Are Beautiful*.

<https://recode.net/2016/03/08/mossberg-samsungs-new-galaxy-s7-phones-are-beautiful/> [“Samsung says Verizon barred including Samsung’s browser and Samsung Pay out of the box.”]

27 Jason Del Rey. *Samsung Pay Eliminates Big Hurdle by Snagging Verizon as Partner*.

<https://recode.net/2015/10/21/samsung-pay-eliminates-big-hurdle-by-snagging-verizon-as-partner/> [“A Samsung Pay executive said this summer at a press briefing that the holdup with Verizon was over “economics,” but declined to comment further.”]

28 Letter from Verizon Assistant General Counsel David Haga to Alex Nguyen (January 18, 2016)

that Verizon blocked Samsung Pay (even as a separate download, until Samsung “partnered” with the carrier on October 21, 2015) under the guise of “extensive testing” (and continues to block Samsung from preloading the application on its devices) to suppress competition against Verizon-backed Android Pay, which launched on September 10, 2015. (Given Verizon doesn't test the millions of applications²⁹ not preloaded on devices it provides to customers, why would the carrier subject Samsung Pay to “extensive testing” but then block Samsung from preloading the application on its devices?)

Verizon claims its “certification” process only tests network connectivity. The carrier said it was “evaluating” Samsung Pay but didn't specify what it was evaluating, and this information isn't available to me from any source other than Verizon.

Verizon has refused to provide evidence that devices or applications meet/don't meet its “requirements,” claiming that such information is “proprietary”; however, as required by the Commission, Verizon must specify “the basis for denying access” and has “the burden of proof to demonstrate that it has adopted reasonable network standards and reasonably applied those standards.”

Alex-VZW 7: Did Verizon subject Apple Pay to the same “extensive testing” Verizon said it did for Samsung Pay? Identify all test results, if any, and communications (including but not limited to communications with Apple and communications within Verizon) related to evaluating Apple Pay.

Explanation: Apple announced Apple Pay on September 9, 2014 and launched the mobile payment service a month later. As Jason Del Rey at Re/code noted,³⁰ Apple could preload Apple

²⁹ At the time of writing, the Google Play application store had over two million applications.

³⁰ Jason Del Rey. *Apple Introduces Apple Pay to Try to Replace Your Wallet*.

<https://recode.net/2014/09/09/apple-introduces-apple-pay-to-try-to-replace-your-wallet/>

Pay on its devices without carrier interference because it has some leverage. (Apple is the most valuable company and brand in the world, and unlike Samsung, Apple has its own retail stores.) Also, Verizon didn't back Android Pay until February 23, 2015.

The information sought in this interrogatory is necessary to the resolution of the assertion that Verizon blocked Samsung Pay (even as a separate download, until Samsung “partnered” with the carrier on October 21, 2015) under the guise of “extensive testing” (and continues to block Samsung from preloading the application on its devices) to suppress competition against Verizon-backed Android Pay, which launched on September 10, 2015. This information isn't available to me from any source other than Verizon.

Verizon has refused to provide evidence that devices or applications meet/don't meet its “requirements,” claiming that such information is “proprietary”; however, as required by the Commission, Verizon must specify “the basis for denying access” and has “the burden of proof to demonstrate that it has adopted reasonable network standards and reasonably applied those standards.”

Alex-VZW 8: Did Verizon subject Android Pay to the same “extensive testing” Verizon said it did for Samsung Pay? Identify all test results, if any, and communications (including but not limited to communications with Google and communications within Verizon) related to evaluating Android Pay.

Explanation: AT&T, T-Mobile, and Verizon announced a deal on February 23, 2015

[“Shoppers in the U.S. have so far failed to widely adopt mobile payment schemes like Google Wallet or ones derived from the wireless carriers themselves, but industry analysts and executives believe Apple can change that. One key difference here is Apple makes both its phones and its operating system, so wireless carriers can’t block customers from using Apple’s mobile payment technology as they did with Google. Apple’s mobile payment system will be fully integrated in its phones, and if a carrier wanted to block the technology, it would have to stop selling the new iPhones altogether. That’s not going to happen.”]

allowing Google to preload its mobile payment service if Google gave them a greater cut of revenue.³¹ The information sought in this interrogatory is necessary to the resolution of the assertion that Verizon blocked Samsung Pay (even as a separate download, until Samsung “partnered” with the carrier on October 21, 2015) under the guise of “extensive testing” (and continues to block Samsung from preloading the application on its devices) to suppress competition against Verizon-backed Android Pay, which launched on September 10, 2015. This information isn't available to me from any source other than Verizon.

Verizon has refused to provide evidence that devices or applications meet/don't meet its “requirements,” claiming that such information is “proprietary”; however, as required by the Commission, Verizon must specify “the basis for denying access” and has “the burden of proof to demonstrate that it has adopted reasonable network standards and reasonably applied those standards.”

Alex-VZW 9: Did Verizon communicate with HTC about FM radio capabilities in its One M8 or One M9 smartphones or with LG about FM radio capabilities in its G4 or G5 smartphones? Identify all communications (including but not limited to communications with HTC and LG and communications within Verizon) related to these devices and FM radio capabilities.

31 Alistair Barr. *To Revive Wallet, Google Tries to Wrangle Unruly Partners*. <http://www.wsj.com/articles/to-revive-wallet-google-tries-to-wrangle-unruly-partners-1424392928> (February 20, 2015) [The three wireless carriers are more willing to work with Google these days, because they get no revenue from Apple Pay, the people familiar with the matter say. Mr. Freed-Finnegan said that's created an incentive for Google and the carriers to cooperate. “Certainly Apple isn't working with the carriers,” he said. The three carriers and Softcard declined to comment. In talks with the carriers, Google is offering to pay them to feature Wallet prominently on their Android phones and is dangling the promise of more revenue from advertising tied to Google searches made on the phones, according to the people familiar with the matter.]

Explanation: HTC confirmed that Verizon requested that HTC disable the FM radio built into its Touch Pro2 smartphone and that HTC “cannot go against the wishes of” Verizon.³² (Additionally, Verizon acknowledged its marketing department's position as gatekeeper.³³) The information sought in this interrogatory is necessary to the resolution of the assertion that Verizon disabled (or compelled HTC to disable) FM radio capabilities in its One M8³⁴ and One M9³⁵ smartphones and disabled (or compelled LG to disable) FM radio capabilities in its G4³⁶ and G5³⁷ smartphones. This information isn't available to me from any source other than

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- 32 oneders65. *What HTC and Verizon say about disabled FM radio...* <http://forum.xda-developers.com/showpost.php?p=4576551> (September 21, 2009) [“The FM radio being disabled is not a choice that was made by HTC; each carrier makes their own specifications for their devices. In this case, Verizon requested that the FM radio not be available on their version of the Touch Pro2. It is possible that they have their own radio software; it is possible that it is something they will make available in a future update. However, there is nothing that HTC Technical Support can do to unlock this feature, as we cannot go against the wishes of the carrier who purchased the device from us.”]
- 33 *Id.* [“Decisions on what applications and functions will be available on our phones are made by our Marketing Department, and can not be overridden. There are no current plans to offer FM Radio on this device in the future.”]
- 34 NAB Labs. *Research Shows Increased Diversity in FM Radio on Smartphones.* <http://www.nab.org/xert/sciTech/2015/RD05182015.pdf> (May 15, 2015) [“A further example is the HTC One. The M8 version of this smartphone has the FM radio enabled across all major U.S. carriers, but with different apps on different carriers: Sprint ships it with NextRadio pre-installed, AT&T and T-Mobile provide a native HTC-supplied FM tuner app (without hybrid radio capability), and Verizon ships it with no FM app (and no mention in the manual that the phone has FM capability).”]
- 35 *Id.* [“It has recently been determined that the newly released successor model, the HTC One M9, is being shipped by Verizon with a different software load, which purposefully blocks the user accessing the device's FM radio capability via a downloaded app. Contrary to the Verizon version of the M8, where the FM radio was functional although not readily available to the consumer, this new version of the Verizon HTC One cannot be activated by downloading an Android FM radio app.”]
- 36 Jared Dipane. *Here are the things the Verizon LG G4 doesn't have that other variants do: Verizon does it again.* <http://www.androidcentral.com/here-are-things-verizon-lg-g4-doesnt-have-other-variants-do> (June 5, 2015)
- 37 David Ruddock. *5 Things I Love About The LG G5.* <http://www.androidpolice.com/2016/04/29/5-things-i-love-about-the-lg-g5/> [“Yep: FM radio is a legitimately useful add-on, and one that basically every smartphone should support, but that has nearly been destroyed by the profit motives of the music streaming and wireless

Verizon.

Alex-VZW 10: Did Verizon communicate with Samsung about disabling network support in Galaxy S7 and Galaxy S7 edge smartphones sold by sources other than Verizon or with HTC about disabling network support in HTC 10 smartphones sold by sources other than Verizon? Identify all communications (including but not limited to communications with Samsung and HTC and communications within Verizon) related to Galaxy S7, Galaxy S7 edge, and HTC 10 smartphones sold by sources other than Verizon.

Explanation: Samsung Galaxy S7 and Galaxy S7 edge smartphones sold by Verizon are the same hardware (FCC IDs: A3LSMG930US, A3LSMG935US) as those sold by other carriers,³⁸ and HTC 10 smartphones sold by Verizon are the same hardware (FCC ID: NM82PS6500) as those sold by AT&T, T-Mobile, and HTC.³⁹ However, network support is disabled in firmware⁴⁰ for devices sold by competing sources. The information sought in this interrogatory is necessary to the resolution of the assertion that Verizon compelled customers to purchase devices preloaded with Verizon-backed applications from the carrier and affiliated

carrier industries. LG's unlocked G5s should all ship with FM radio enabled as far as I know - my unlocked EU version has the FM radio app installed by default. Unfortunately, I already know Verizon has disabled it on their G5, but it does appear to be active on Sprint's (you'll apparently have to download an app to use it, though)."]

38 Rich Brome. *Samsung Galaxy S7 Clears FCC with Single Approval*.

<http://www.phonescoop.com/articles/article.php?a=17201> (February 4, 2016) ["The common FCC ID means a very standard hardware design across all carrier variants. FCC documents indicate that the carrier variants will be sold in a state limited to that carrier's network bands, presumably via low-level firmware."]

39 Mo Versi (VP, Product Management at HTC). Tweet on March 9, 2016.

<https://twitter.com/moversi/status/722195818313179136> [mspector22: "Why won't the unlocked HTC 10 work on Verizon? It supports all the right bands (850, 1900 MHz for CDMA and 2,4, 13 for LTE)" moversi: "Yes, unfortunately it won't. I can't provide specifics, but you can purchase directly from the carrier soon!"]

40 Michael Crider. *The GSM-LTE Unlocked Version of the HTC 10 Will Work On Verizon After A Simple Radio Flash*. <http://www.androidpolice.com/2016/05/11/the-gsm-lte-unlocked-version-of-the-htc-10-will-work-on-verizon-after-a-simple-radio-flash/>

retailers by abusing its position as gatekeeper (in particular, its retail operations) to compel edge providers to disable network support in devices sold by competing sources. This information isn't available to me from any source other than Verizon.

IV. PRAYER FOR PRODUCTION

I respectfully request that the Commission, pursuant to 47 CFR § 1.729(h), order Verizon to produce all communications responsive to these interrogatories.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alex Nguyen".

Alex Nguyen
1050 Kiely Blvd. #2608
Santa Clara, CA 95055
408-499-4239
communicator@doubleperfect.com